

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Donovan J. Robinson,

Plaintiff,

v.

**MEMORANDUM OPINION
AND ORDER**

Civil No. 05-2287 ADM/AJB

Warden Lynn Dingle, Mark Thielen,
Larnscie Stevenson, Kim Ebeling,
and Denise Overturf,

Defendants.

Donovan J. Robinson, *pro se*.

Mark B. Levinger, Esq., Assistant Minnesota Attorney General, St. Paul, MN, for and on behalf
of Defendants.

I. INTRODUCTION

This matter is before the undersigned United States District Judge on Plaintiff Donovan J. Robinson's ("Plaintiff") Objections [Docket No. 32] to the Report and Recommendation ("R&R") of Magistrate Judge Arthur J. Boylan [Docket No. 31], issued on January 31, 2006. Judge Boylan recommended denial of Plaintiff's Motion for Default Judgment [Docket Nos. 15, 16, 17]. For the reasons set forth below, Plaintiff's Objections are denied and his Motion denied.

II. DISCUSSION

In reviewing an R&R, the district court "shall make a de novo determination upon the record" and "may accept, reject, or modify the recommended decision" of the magistrate judge. D. Minn. LR 72.2(a).

On October 5, 2005, Judge Boylan issued an Order [Docket No. 8] granting Plaintiff's Motion for Leave to Proceed In Forma Pauperis [Docket No. 2] and instructing the U.S. Marshals to complete service of Defendants after Plaintiff submitted completed U.S. Marshal Service Forms for each Defendant. On December 6, 2005, Defendants acknowledged receipt of the summons and complaint by mail. Two days later, Plaintiff moved for default judgment. Defendants opposed the Motion, arguing that Plaintiff was construing the date the U.S. Marshals mailed the complaint, November 8, 2005, as the date for the commencement of the twenty day period for service of the answer. This date merely marks the beginning of the time period given to Defendants to acknowledge service by mail. A defendant is then given an additional twenty days to answer. Because Defendants did not acknowledge receipt of the summons and complaint within twenty days, service upon them was technically ineffective. Therefore, Defendants offered to acknowledge proper service if Plaintiff withdrew his default motion and allowed Defendants until January 30, 2006 to file an answer. Plaintiff did not respond and did not seek to properly serve Defendants, although Defendants filed an Answer [Docket No. 29] on January 30, 2006.

The R&R recommends denial of Plaintiff's Motion for Default Judgment. It also recommends that Defendants' Answer be deemed to have been timely served, and as a result, Defendants' Motion for Extension of Time to File Answer [Docket No. 25] be deemed moot. Plaintiff objects to the recommendation, reiterating his argument that the Answer was not timely filed, and as a result, he is entitled to default judgment. The R&R, however, correctly interprets both the Federal and Minnesota Rules of Civil Procedure, and suggests a reasonable and efficient resolution to the ineffective service of Defendants. Consequently, the R&R will be adopted.

III. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Objections [Docket No. 32] are **DENIED**;
2. The Report and Recommendation [Docket No. 31] is **ADOPTED**;
3. Plaintiff's Motion for Default Judgment [Docket Nos. 15, 16, 17] is **DENIED**;
4. Defendants' Answer [Docket No. 29] is determined to have been timely served; and
5. Defendants' Motion for Extension of Time to File Answer [Docket No. 25] is

MOOT.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: March 9, 2006.